



**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005**

**Statements on Recent Actions of the U.S. Election Assistance Commission
Concerning Use of HAVA Funds and the Federal Mail Voter Registration Form
By Commissioner Gracia Hillman
April 30, 2008**

Policy Regarding Use of HAVA Funds: On April 16, 2008, the U.S. Election Assistance Commission (EAC) considered and adopted a policy that establishes a process under which EAC will review requests for and issue advisory opinions on the use of HAVA funds. The vote to adopt was 3 in favor and 1 opposed; I was the dissenting vote.

The proposal was introduced by Commissioner Caroline Hunter. Its important goals included establishing a policy that would require commission involvement in the issuance of advisory opinions regarding the use of HAVA funds and establish accompanying internal procedures that are very specific and firm so as to move efficiently and expeditiously. I agree that EAC should do both.

I voted against the proposed policy for several reasons, all of which are embodied in an unnecessary rush to adopt the proposed policy without full consideration.

1. The policy invites local units of government to directly request funding opinions from EAC, thus by-passing the State. Local units of government receive HAVA funds from the State and not EAC. States are responsible for the appropriate expenditure of HAVA funds and should be working in tandem with their local units of government when clarification is needed. EAC should separately establish a procedure for a local unit of government to directly question EAC when it believes its State is not appropriately spending HAVA funds and when they cannot reach resolution with the State.
2. The policy provides an insufficient period of ten (10) calendar days for the public to comment on the proposed advisory. Part of EAC's dilemma is that it passed this policy before adopting a policy that codifies public comment periods not stipulated in HAVA.
3. The policy requires a vote of the commission on all HAVA spending advisory opinions, even when EAC has no discretion. I agree that the commission should be involved prior to advisories being issued but the process would be well served with efficiency if there was a floor on commission votes. For example, I do not see that commissioners need to vote to approve an advisory that is restricted or

other wise governed by already approved EAC policies, OMB Circulars, the Common Rule or other rules that all Federal agencies must follow.

I recommended that a two member bi-partisan sub-committee of the commission should work with staff, within a prescribed time frame, to review each request for an advisory opinion and recommend appropriate action to the commission. Such a procedure would increase efficiency and prevent duplicity.

4. The policy does not provide a process for States to appeal or request reconsideration of the advisory. The policy is very specific on procedures yet presumes that States would know that they can request reconsideration without articulating that option or providing such mechanism. EAC should not pass policies that would result in litigation for lack of an internal appeals process to the Commission.
5. EAC's process to consider the proposal was erratic. It began with a mention of intention to propose the policy at EAC's March meeting, to internal notice that it would possibly be issued as a tally vote (an in-house, unnoticed process reserved for routine administrative matters or items covered by existing policies not requiring public comment), to a tentative item for EAC's April 16 meeting, to finally being posted for public comment on EAC's website with minimal notice prior to its final consideration.

Prior to our April 16 meeting, I urged my fellow Commissioners to reject tally voting the proposal. We needed to give ourselves and EAC staff adequate time to fully consider the impact of the proposal AND to allow for an appropriately noticed period for public comment. There was no urgency that warranted such uncertainty of process.

6. The overwhelming majority of States were silent on the proposal in direct contrast to their earlier contentions about responsibilities under HAVA (only 4 States provided comment). This policy speaks directly to States. Their input is always critical to EAC's ability to develop appropriate policy, especially when the policy includes procedures that States must follow. I believe the less than adequate period for public comment caused this disappointing response from States.

In March, I suggested that EAC hold a second meeting in April, which would be devoted to consideration of various policy decisions. I also urged a minimal delay for consideration of the proposed HAVA spending policy from April 16 to April 30. Although the April 30 meeting had not been confirmed, it was under active consideration at that time and has subsequently been scheduled. A postponement would have allowed more thorough consideration of the policy for the reasons stated above.

EAC has a responsibility to fully consider the impact of its policies on States, local units of government, itself and most importantly, the voters. This process did not fulfill that responsibility.

Changes to State Specific Instructions on the Federal Mail Voter Registration

Form: Between September 2007 and February 2008, EAC tried but failed to reach agreement on a policy and procedures under which EAC would consider changes to State specific instructions on the Federal Mail Voter Registration Form. It remains my position that EAC should have its own such policy and procedures in place. I articulated my position in a December 7, 2007 statement, which is posted on my commissioner site at www.eac.gov.

Also in September 2007, the commission agreed to accept transfer of the National Voter Registration Act (NVRA) regulations previously promulgated by the Federal Election Commission (FEC). We initiated the transfer process in September, beginning with a public comment period. Unfortunately, the process has been impeded by lack of an FEC quorum.

In the meantime, a number of States submitted requests for updates to their state specific instructions. It became important for EAC to take action on the requests. Given the reality of the commission's deadlock on a policy and procedures, and the growing number of update requests that were pending, I reluctantly agreed to consider each request on a case by case basis. However, I took the position that EAC can only consider updates to those State specific instructions that are already on the form. Those instructions are covered by the existing regulations, which EAC has previously agreed to post as its own when the transfer process can be completed.

In March 2008, the commission took action on all update requests that were pending at that time. Those actions are recorded in the minutes of the March 2008 meeting, which are posted at www.eac.gov.

The NVRA was passed and signed into law to level the voter registration playing field that spans a patchwork of State and local laws. The law provides a uniform mail-in voter registration process that can be used by all citizens, including a form that must be accepted by the states. EAC is responsible for making certain that the form serves the best interests of voters while respecting and upholding the provisions and intent of the NVRA. I intend to continue to work to that end.

###